



## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

#### 15 CFR Part 801

Docket No.: 220616-0136

RIN 0691-AA93

### Direct Investment Surveys: BE-12, Benchmark Survey of Foreign Direct Investment in the United States

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would amend regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to set forth the reporting requirements for the 2022 BE-12, Benchmark Survey of Foreign Direct Investment in the United States. The BE-12 survey is conducted every five years; the prior survey covered 2017. The benchmark survey covers the universe of foreign direct investment in the United States and is BEA's most detailed survey of such investment. For the 2022 BE-12 survey, BEA proposes changes in data items collected, the design of the survey forms, and the reporting requirements for the survey to satisfy changing data needs and to improve data quality and the effectiveness and efficiency of data collection.

**DATES:** Comments on this proposed rule will receive consideration if submitted in writing on or before [insert date 60 days after publication in Federal Register].

#### ADDRESSES:

You can submit comments, identified by RIN 0691-AA93, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal*: <https://www.regulations.gov>. Follow the instructions for submitting comments. For Keyword or ID, enter “EAB–2022–0003.”
- *E-mail*: [Kirsten.Brew@bea.gov](mailto:Kirsten.Brew@bea.gov).
- *Mail*: Multinational Operations Branch, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE-49, Washington, DC 20233.
- *Hand Delivery/Courier*: Multinational Operations Branch, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE-49, 4600 Silver Hill Road, Suitland, MD 20746.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent both to BEA through any of the methods above and to the Office of Management and Budget (OMB) by submitting comments at [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under Review" or by using the search function and entering the title of the collection.

*Public Inspection*: All comments received are a part of the public record and will generally be posted to <https://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commentator may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. BEA will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Kirsten Brew, Chief, Multinational Operations Branch (BE-49), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20233; e-mail [Kirsten.Brew@bea.gov](mailto:Kirsten.Brew@bea.gov) or phone (301) 278-9152.

**SUPPLEMENTARY INFORMATION:** The BE-12, Benchmark Survey of Foreign Direct Investment in the United States, is a mandatory survey and is conducted once every five years by BEA under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108), hereinafter, “the Act.” The data reported to BEA through this survey are confidential and may be used only for analytical and statistical purposes. A response is required from persons subject to the reporting requirements of the BE-12, whether or not they are contacted by BEA.

The BE-12 survey covers the universe of foreign direct investment in the United States in terms of value and is BEA’s most detailed survey of such investment. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the BE-12 survey is to obtain universe data on the financial and operating characteristics of U.S. affiliates and on positions and transactions between U.S. affiliates and their foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). These data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy. Such data are generally found in enterprise-level accounting records of respondent companies. These data are used to derive current universe estimates of direct investment from sample data collected in other BEA surveys in non-benchmark years. In particular, they serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions, international investment position, and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the activities of the U.S. affiliates of foreign companies.

This proposed rule would amend 15 CFR 801 to set forth the reporting requirements for

the BE-12, Benchmark Survey of Foreign Direct Investment in the United States. The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520 (PRA).

### **Description of Changes**

The proposed changes would amend the regulations and the survey forms for the BE-12 benchmark survey. These amendments include changes in data items collected and the design of the survey forms.

BEA proposes to add, delete, and modify some items on the BE-12 survey forms. Most of the additions are proposed in response to suggestions from data users and to provide more information about foreign direct investment in the United States. The following items would be added to, or modified on, the BE-12 survey:

- (1) A question will be added to collect the city of each foreign parent and ultimate beneficial owner (UBO) on all forms. This will be used to validate the countries of foreign investors and provide additional information on the location of investors.
- (2) The balance sheet and income statement sections on the BE-12A form will be modified to separately collect the investment in, and income from, a) “unconsolidated U.S. affiliates” and b) “foreign entities,” which were previously collected as a combined total. This will assist in ensuring complete coverage of unconsolidated U.S. affiliates and in better aligning the BE-12 survey data with other direct investment surveys.
- (3) Supplemental sections A and B, which collect identification information on business enterprises owned by the U.S. affiliate, will be modified on all BE-12 forms to request more information on the reasons the U.S. business enterprises changed since the last report. This will include options for “newly acquired” or “newly established” if an enterprise is being reported on

a supplement for the first time, and options to report U.S. business enterprises that had a name change, were sold, merged or liquidated. A follow-up question will be added requesting the date of the corporate change for new enterprises. This information will allow BEA to inform entities about potential reporting requirements on other surveys of foreign direct investment in the United States.

(4) Questions will be added on the BE-12A form to collect sales data for certain service types where there is no clear link between the industry of sales and the type of services supplied. Those service types are 1) intellectual property (IP) rights and 2) advertising. These questions will contribute to BEA's efforts to develop a more complete and consistent picture of the types of services supplied by U.S. companies worldwide.

(5) Questions will be added to collect sales data on the BE-12A form related to the provision of selected services generally recognized as prevalent in the digital economy. These selected services are 1) cloud computing and data storage and 2) digital intermediation services. In addition, checkboxes will be added to the BE-12A for respondents to identify the percentage of their sales of services delivered remotely, sales of services that were digitally ordered, and sales of goods that were digitally ordered, along with checkboxes to identify if this information was sourced from their accounting records or from recall/general knowledge. These questions will contribute to BEA's efforts to measure the digital economy.

BEA also proposes to eliminate the following items from the benchmark survey:

- (1) Expensed petroleum and mining expenditures will be removed from the BE-12A form.
- (2) Commercial property will be removed from the state schedule of the BE-12A and BE-12B forms. Respondents have been confused by this concept, which can vary by state or industry, and have indicated that the information may not be readily available from their records.
- (3) Part III of the BE-12A and BE-12B forms, which collects information on investment and transactions between the U.S affiliate and the affiliated foreign group will be scaled back to include only the following items:

- Foreign parent ownership and classification information
- A question on reverse investment
- Intercompany debt balances for U.S. affiliates with less than \$60 million in assets, sales, or net income.

BEA will also modify the survey forms to improve question wording, layout, and instructions.

This proposed rule would amend 15 CFR part 801 by modifying § 801.10 to clarify the timing of this benchmark survey. The next BE-12 survey will apply to the 2022 fiscal reporting year, and will be conducted once every five years thereafter, for reporting years ending in 2 and 7.

Each time a benchmark survey is to be conducted, BEA will describe any proposed changes to the information collected through the survey (including the addition, deletion, and/or modification of existing questions and definitions) in a public notice and will solicit comments as part of the requirements of the Paperwork Reduction Act (PRA). Any changes to reporting requirements or significant expansions in scope of the surveys would be conducted by rulemaking.

### **Executive Order 12866**

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

### **Executive Order 13132**

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

### **Paperwork Reduction Act**

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the PRA. The requirement will be submitted to OMB for approval as a reinstatement, with change, of a previously approved collection under OMB control number 0608-0042.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

The BE-12 survey, as proposed, is expected to result in the filing of reports from approximately 26,400 U.S. affiliates. Total annual burden is calculated by multiplying the estimated number of submissions of each form (A, B, C, and Claim for Not Filing) by the average hourly burden per form and summing the results for the four forms. The total respondent burden for this survey is estimated at 276,441 hours, compared to 249,625 hours for the previous (2017) benchmark survey. An increase in the number of foreign-owned companies accounts for nearly all of the increase in the estimated respondent burden, while the addition of new questions and the deletion of previous questions had a marginal impact on the estimated respondent burden. The respondent burden will vary from one company to another. The estimated average time per respondent is 10.5 hours (276,441 hours/26,400 respondents) per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA and OMB following the instructions given in the ADDRESSES section above.

**Regulatory Flexibility Act**

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities.

Most of the U.S. business enterprises that are required to file the survey are units of multinational enterprises. To qualify as a small business, the multinational enterprise as a whole must be evaluated when determining if the business meets the size standards set by the Small Business Administration. While BEA only collects information on the U.S. portion of the multinational enterprise, the size determination takes into account the sizes of both the U.S. businesses and their foreign parents. BEA estimates that approximately 15 percent of the U.S. businesses that will be required to respond to the BE-12 survey are considered small businesses based on the SBA size standards.

For the relatively few small businesses that meet the reporting requirements of the survey, BEA has attempted to keep burden to a minimum by asking a limited number of questions. The amount of information required to be reported by each U.S. affiliate is determined by the size of the affiliate's assets, sales, or net income or loss. The reporting thresholds for Form BE-12A (the longest form) and Form BE-12B are \$300 million and \$60 million, respectively. All affiliates below \$60 million will file on Form BE-12C (the shortest form). The smallest affiliates, those below \$20 million, are only required to report a few items on Form BE-12C. These data items are likely to be readily available from existing business records. Compliance with the survey should take less than one hour. Because few small businesses are required to file the survey and because those impacted are subject to only minimal reporting burden, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

#### **List of Subjects in 15 CFR Part 801**

Economic statistics, Foreign direct investment in the United States, International



transactions, Multinational enterprises, Penalties, Reporting and record keeping requirements.

**Paul W. Farello,**

*Associate Director of International Economics, Bureau of Economic Analysis*

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801 as follows:

**PART 801--SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT**

1. The authority citation for 15 CFR part 801 continues to read as follows:

**Authority:** 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

2. Revise § 801.3 to read as follows:

**§ 801.3 Reporting requirements.**

Except for surveys subject to rulemaking in §§ 801.7, 801.8, 801.9, and 801.10, reporting requirements for all other surveys conducted by the Bureau of Economic Analysis shall be as follows:

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Bureau of Economic Analysis in the *Federal Register* prior to the implementation of a survey;

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code, persons notified of these surveys and subject to the jurisdiction of the United States shall furnish, under oath, any report containing information that is determined to be necessary to carry out the surveys and studies provided for by the Act; and

(c) Persons not notified in writing of their filing obligation by the Bureau of Economic Analysis are not required to complete the survey.

3. Amend § 801.10 to read as follows:

## **§ 801.10 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States.**

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States, will be conducted once every five years and covers years ending in 2 and 7. BEA will describe the proposed information collection in a public notice and will solicit comments accounting to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501-3520). All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-12 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-12, Benchmark Survey of Foreign Direct Investment in the United States, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant this section. This may be accomplished by filing a properly completed BE-12 report (BE-12A, BE-12B, BE-12C, or BE-12 Claim for Not Filing);

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate (except certain private funds as described below), that is, for each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, at the end of the business enterprise's fiscal year that ended in the calendar year covered by the survey. Certain private funds are exempt from reporting on the BE-12 survey. If a U.S. business meets ALL of the following 3 criteria, it is not required to file any BE-12 form except to indicate exemption from the survey if contacted by BEA: 1) The U.S. business enterprise is a private fund; 2) the private fund does not own, directly

or indirectly through another business enterprise, an “operating company” - i.e., a business enterprise that is not a private fund or a holding company - in which the foreign parent owns at least 10 percent of the voting interest; AND 3) if the foreign parent owns the private fund indirectly (through one or more other U.S. business enterprises), there are no U.S. “operating companies” between the foreign parent and the indirectly-owned private fund.

(c) *Forms to be filed.* (1) Form BE-12A must be completed by a U.S. affiliate that was majority-owned by one or more foreign parents (for purposes of this survey, a “majority-owned” U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent) if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, if any one of the following three items for the U.S. affiliate (not just the foreign parent’s share) was greater than \$300 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey:

- (i) Total assets (do not net out liabilities);
- (ii) Sales or gross operating revenues, excluding sales taxes; or
- (iii) Net income after provision for U.S. income taxes.

(2) Form BE-12B must be completed by:

(i) A majority-owned U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent’s share), was greater than \$60 million (positive or negative) but none of these items was greater than \$300 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey.

(ii) A minority-owned U.S. affiliate (for purposes of this survey, a “minority-owned” U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less) if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph

(c)(1) of this section (not just the foreign parent's share), was greater than \$60 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey.

(3) Form BE-12C must be completed by a U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, none of the three items listed in paragraph (c)(1) of this section for a U.S. affiliate (not just the foreign parent's share), was greater than \$60 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey.

(4) Any U.S. person that is contacted by BEA concerning the BE-12 survey, but is not subject to the reporting requirements, must file a BE-12 Claim for Not Filing. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately on the same type of report that would have been required if the real estate holdings were aggregated.

(e) *Due date.* A fully completed and certified Form BE-12A, BE-12B, BE-12C, or BE-12 Claim for Not Filing is due to be filed with BEA not later than May 31 of the year after the year covered by the survey (or by June 30 for reporting companies that use BEA's eFile system).

**BILLING CODE 3510-06-P**

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